42D CONGRESS, 3d Session. | SENATE. | REPORT No. 241.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1872.—Ordered to be printed.

Mr. POMEROY submitted the following

REPORT:

[To accompany bill S. 1257.]

The Committee on Public Lands, to whom was referred Senate bill No. 1213, "For the relief of settlers on the Cherokee neutral lands in Kansas," submit the following report:

On the 28th day of May, 1830, Congress passed "An act to provide for an *exchange* of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi."

SECTION 1. *Be it enacted, &c.,* That it shall and may be lawful for the President of the United States to cause as much of any territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks as to be easily distinguished from every other.

Section 3 is as follows:

And be it further enacted, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always,* That such lands shall revert to the United States if the Indians become extinct or abandon the same.

On the 29th day of December, 1835, the United States and the Cherokee Nation made a treaty.

Among other lands conveyed to the Cherokees by that treaty was what has since that time been known as the "*Cherokee neutral land.*"

Article 3 of that treaty is in these words:

The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet and those ceded by this treaty, shall all be *included in one patent executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May* 28, 1830. (U. S. Statutes, vol. 7, p. 478.)

On the 31st day of December, 1838, a patent was issued to the Cherokees under the above treaty and law, the granting clause of which is in the following words:

Therefore, in execution of the agreements and stipulations contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee Nation the two tracts of land so surveyed and hereinbefore described, containing in the whole 13,374,135$\frac{14}{100}$ acres, to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging,

to the said Cherokee Nation forever, subject, however, to the right of the United States to permit other tribes of red men to get salt on the salt-plain on the Western Prairie, referred to in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five, which salt-plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject also to all the other rights reserved to the United States in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the condition provided by the act of Congress of the 28th of May, 1830, and which condition is, "that the lands hereby granted shall revert to the United States if the said Cherokees become extinct or abandon the same."

Such was the title by which the Cherokee Indians held the body of lands, now in the State of Kansas, known as the Cherokee neutral lands, and containing in round numbers 800,000 acres.

As a part of the history of the occupation of these lands by white settlers, your committee will here quote from "Report No. 12, Forty-first Congress, second session," made by the Hon. J. P. C. Shanks, from the Committee on Indian Affairs of the House of Representatives, to the House:

Before the war a number of white families settled on this tract, and your committee cannot learn that any objection was made to their settlement, either by the Government or the Indians, until November 29, 1859. These settlers paid taxes and voted as early as 1859, and continually since. In October, 1860, one Cowan, a pro-slavery secessionist, acting in the interests of the rebellion, then agent for the Cherokees, came upon the tract, sustained by a company of United States troops, under command of Captain Sturges, of the United States Army. Your committee learn that fourteen cabins were burned, and at that stage of the affair an arrangement was made between the people and the military by which further ejectment of settlers was stayed. It appears that the settlers sent a committee of two, accompanied by two other persons, to see President Buchanan, and that the President and Secretary of the Interior told the committee to go home and say to the settlers to stay on their claims, and they should never be moved from them; and that the Secretary of the Interior, Jacob Thompson, assured them he never had ordered them to be removed from those lands, and that they never would be ordered to leave them.

The interference of the military at that time was in the interest of slavery in that particular locality, and had no other significance or purpose. During the rebellion most of the settlers on these lands were compelled to temporarily abandon their homes; many entered the United States Army, leaving their families at Fort Scott and other places of security, and those who survived, and the families of those who did not survive, returned again at the close of the war. A great many soldiers and others have settled on these lands since the war.

It is declared by the settlers on this land that in March, 1866, President Johnson wrote to them to "go on and settle it up," and assured them of protection under the pre-emption laws of the United States. Letters of similar purport were sent them by others in official station at Washington.

It appears from the records of the Indian Office, and from the statement of citizens, that white settlers were encouraged to occupy these lands by the Indians themselves. As early as August 11, 1866, it appears that the recognized actual settlers on the neutral lands, being heads of families, numbered one thousand and thirty-one.

Your committee find that on the 7th day of October, 1861, a "treaty of friendship and alliance was concluded between the Confederate States and the Cherokee Nation of Indians," and that that treaty was authorized by a "general convention of the Cherokee people."

In which "treaty" may be found the following:

ART. 47. Whereas, by the treaty of the 29th day of December, A. D. 1835, the United States of America, in consideration of the sum of $500,000, part of the sum of $5,000,000 agreed by that treaty to be paid to the Cherokee Nation for the cession of their lands and possessions east of the Mississippi River, did covenant and agree to convey to the Cherokees and their descendants, by patent in fee-simple, the certain tract of land between the State of Missouri and the Osage reservation, the boundary-line whereof it was provided should begin at the southeast corner of said Osage reservation and run north along the east line of the Osage lands fifty miles to the northeast corner thereof; thence east to the west line of the State of Missouri; thence with that line south fifty miles; and thence west to the place of beginning; which tract of country was estimated to contain eight hundred thousand acres of land; and whereas the same has been seized and settled upon by lawless intruders from the Northern States, and may be

totally lost to the Cherokees: Now, therefore, it is further hereby agreed between the parties to this treaty, that in case the said tract of country should be ultimately lost to the Cherokees by the chances of war, or the terms *of a treaty of peace or otherwise,* the Confederate States of America do assure and guarantee to the Cherokee Nation the payment therefor of the said sum of $500,000, with interest thereon, at the rate of five per cent. per annum, from the said 29th day of December, A. D. 1835; and will either procure the payment of the same by the United States, or pay the same out of their own treasury, after the restoration of peace.

ART. 48. At the request of the authorities of the Cherokee Nation, and in consideration of the *unanimity and promptness of their people in responding to the call of the Confederate States for troops,* and of their want of means to engage in any works of public utility and general benefit, or to maintain in successful operation their male and female seminaries of learning, the Confederate States do hereby agree to advance to the said Cherokee Nation, immediately after the ratification of this treaty, on account of the said sum to be paid for the said lands mentioned in the preceding article, the sum of $150,000, to be paid to the treasurer of the nation, and appropriated in such manner as the legislature may direct; and to hold in their hands, as invested for the benefit of said nation, the further sum of $50,000, and to pay to the treasurer of said nation interest thereon annually, on the 1st day of July in each year, at the rate of six per cent. per annum.

On the 11th day of August, 1866, another treaty was made between the United States and the Cherokees.

Article 17 of that treaty is as follows, (U. S. Statutes, vol. 14, p. 804:)

The Cherokee Nation hereby cedes, in trust, to the United States, the tract of land in the State of Kansas which was sold to the Cherokees by the United States under the provisions of the second article of the treaty of 1835, and also that strip of land ceded to the nation by the fourth article of said treaty which is included in the State of Kansas; and the Cherokees consent that said lands may be included in the limits and jurisdiction of the said State.

The lands herein ceded shall be surveyed as the public lands of the United States are surveyed, under the direction of the Commissioner of the General Land-Office, and shall be appraised by two disinterested persons, one to be designated by the Cherokee national council, and one by the Secretary of the Interior, and, in case of a disagreement, by a third person, to be mutually selected by the aforesaid appraisers; the appraisement to be not less than an average of one dollar and a quarter per acre, exclusive of improvements.

And the Secretary of the Interior shall, from time to time, as such surveys and appraisements are approved by him, after due advertisements for sealed bids, sell such lands to the highest bidders, for cash, in parcels not exceeding one hundred and sixty acres, and at not less than the appraised value: *Provided,* That whenever there are improvements of the value of fifty dollars made on the lands, not being mineral, and owned and personally occupied by any person for agricultural purposes at the date of the signing hereof, such person so owning, and in person residing on such improvements, shall, after due proof, made under such regulations as the Secretary of the Interior may prescribe, be entitled to buy, at the appraised value, the smallest quantity of land in legal subdivisions, which will include his improvements, not exceeding in the aggregate one hundred and sixty acres; the expenses of survey and appraisement to be paid by the Secretary out of the proceeds of sale of said land: *Provided,* That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said neutral lands in a body to any responsible party, for cash, for a sum not less than eight hundred thousand dollars.

The above was amended as follows:

Amendment 2. Strike out the last proviso in article 17, and insert in lieu thereof the following: "*Provided,* That nothing in this article shall prevent the Secretary of the Interior from selling the whole of said lands not occupied by actual settlers at the date of the ratification of this treaty, not exceeding one hundred and sixty acres to each person entitled to pre-emption under the pre-emption laws of the United States, in a body, to any responsible party, for cash, for a sum not less than one dollar per acre."

On the 30th day of August, 1866, James Harlan, then Secretary of the Interior, sold to the American Emigrant Company—

All that tract of land known as the "Cherokee Neutral Lands," in the State of Kansas, containing (800,000) eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the seventeenth article of a treaty between the United States and said Cherokee Indians, ratified on the 11th day of August, A. D. 1866, as amended by the United States Senate, with all the beneficial interest therein,

at the rate of one dollar per acre in lawful money of the United States, to be paid to the Secretary of the Interior in trust for said Indians, as hereinafter set forth.

On the 4th of October, 1866, Attorney-General Stanbery, in an official opinion, held the sale by Harlan to the Emigrant Company to be "null and void," and soon thereafter O. H. Browning, then Secretary of the Interior, set aside that sale, and on the 9th day of the same month sold the same lands to "James F. Joy, of the city of Detroit, Michigan."

This sale by Browning to Joy was ratified in a supplemental treaty between the United States and the Cherokees, which was proclaimed on the 10th day of June, 1868.

For reasons unknown to your committee, this supplemental treaty is not to be found upon the pages of the Statutes of the United States.

Your committee have already spoken of the encouragement given to settlers to locate upon these lands, by Presidents Buchanan and Johnson, by members of Congress, and also by the Indians. It is worthy of notice that the assuring words of President Buchanan to the committee of settlers who visited him in October, 1860, were spoken nearly six years before the cession of these lands to the United States, and that the letter of President Johnson was written *after* the treaty of cession of August 11, 1866, and *before* the supplemental treaty of June 10, 1868; and that the additional assurance of the then Secretary of the Interior, Jacob Thompson, was to the same men, and at the same time with that of Buchanan.

These assurances would very naturally have great weight with the settlers.

From time to time about 4,500 claimants have located upon these lands—allowing the usual average of five to the family, a population of 25,000.

Your committee have no reason to believe that these people differ in character from other bands of settlers in other new parts of our country. Probably they are neither better nor worse, save, possibly, in the one fact that more than three-fourths of them were Union soldiers.

The peculiar circumstances of the locality, and of the times, have caused their settlement of that country to be attended with far more than the ordinary share of hardship, loss, and of positive suffering.

The settlers have always asserted their right to title, and since the purchase by Joy have constantly contested his claim.

This they have done on the ground—

1st. That by the patent to the Cherokees, and the treaty of 1835, and the law of 1830, the United States retained the reversionary right of the land.

2d. That this being the property of the United States, could only be disposed of by Congress, and was subject to a disposition by Congress, at any time, which should take effect whenever the Indians should cease to occupy the land.

3d. That Congress had already promised to settlers in their circumstances the benefit of the pre-emption law.

To sustain the first of these propositions they have quoted the law of 1830, the treaty of 1835, and the patent of 1838.

In support of the second they have brought forward the Constitution of the United States, art. 4, sec. 3:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The Constitution itself (art. 1, sec. 1) says Congress shall consist of a Senate and House of Representatives.

Decisions of the Supreme Court in the following and other cases:

In Bagnell *et al.* *vs.* 2 Broderick, 13 Peters, p. 450, (13 C. R., 235,) the Supreme Court said:

Congress has the sole power to declare the effect and dignity of titles emanating from the United States.

In the United States *vs.* Fitzgerald, (15 Peters, p. 421,) the Supreme Court said:

No appropriation of land can be made for any purpose but by authority of Congress.

13 Peters, 498, (13 C. R., 266,) Supreme Court says:

Whether a title to a tract of public lands has passed from the United States is a question depending upon statutes enacted by Congress.

15 Peters, 407, (14 C. R., 128:)

Congress has exclusive power to make and authorize appropriations of the public lands.

14 Peters, 525, the court said:

The power over the public lands is vested in Congress *without limitation*.

And such other authorities as the following:

Clifford, Attorney-General, said, (Opinions Attorneys-General, vol. 4, p. 696:)

Congress has the exclusive power, under the Constitution, to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States.

Again, page 706:

The power over the public lands is vested by the Constitution *exclusively in Congress*, and the President has no authority over the subject, except what may be inferred from the general power to see that the *laws* are faithfully executed, unless it be conferred upon him by an *act of Congress;* nor can the power, when conferred, be *exercised in any other form or mode of proceeding than that which the law prescribes.* This view is too firmly established by the Constitution, as a primary principle in the distribution of its powers, to need any confirmation, and the proposition is too palpable to require any illustration to enforce it.

In the case of Maison-Rouge grant, (Op., vol. 3, page 737,) Mr. Legare, Attorney-General, Congress having refused to confirm certain claims guaranteed by treaty with France, said:

The legislature, for reasons satisfactory to itself, and according to principles which I had the honor to develop more fully in a recent communication to you on the subject of the Missouri land-titles, chose to acknowledge those claims only *sub modo* and to a limited extent. *Its will is our law.*

Story (on the Constitution, vol. 1, p. 312) said:

Every power given to Congress is, by the Constitution, necessarily supreme.

Also the action of the House of Representatives in the following cases:

PROCEEDINGS IN THE HOUSE.

June 1, 1868.—By Mr. JULIAN:

Whereas the Indian tribes of the United States have no power by treaty to dispose of their lands, except the power of cession to the United States; and whereas a treaty is now being negotiated between the Great and Little Osage Indians and a special Indian commission acting on the part of the United States, by which 8,000,000 acres of land belonging to those Indians are to be transferred to the Leavenworth, Lawrence, and Galveston Railroad Company, in contravention of the laws and policy of the United States affecting the public domain: Therefore,

Resolved, That the President of the United States be requested to inform this House by what authority and for what reason the said lands are to be disposed of as above recited, and not ceded to the United States and made subject to their disposition.

Passed unanimously.

Joint resolution (H. R. 286) relative to the lands of the Cherokee and Great and Little Osage Indians:

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, directed to withhold the issuing of patents to the purchasers of lands heretofore sold, or which may hereafter be sold, under and by virtue of the treaty between the United States and the Cherokee Indians, concluded on the nineteenth day of July, in the year eighteen hundred and sixty-six, and the treaty between the United States and the Great and Little Osage Indians, concluded on the twenty-ninth day of September, in the year eighteen hundred and sixty-five, or under any Indian treaty which may hereafter be concluded, until otherwise provided for by law.

Passed the House of Representatives June 3, 1868.

EDWARD McPHERSON, *Clerk.*

In reference to the same treaty then pending before the Senate Committee on Indian Affairs, June 18, 1868, the following resolution was offered by Mr. Clarke, of Kansas:

Resolved, (as the sense of this House,) That the objects, terms, conditions, and stipulations of the aforesaid pretended treaty are not within the treaty-making power, nor are they authorized either by the Constitution or laws of the United States; and therefore this House does hereby solemnly condemn the same, and does also earnestly but respectfully express the hope and expectation that the Senate will not ratify the said pretended treaty.

Passed unanimously.

June 27, 1868.—By Mr. Julian, resolution denying the right of treaty-making power to dispose of Indian lands. Passed.

[H. R. 335.]

JOINT RESOLUTION for the protection of settlers on the Cherokee neutral lands in Kansas.

Whereas, in the treaty between the United States and the Cherokee Nation of Indians made July nineteenth, eighteen hundred and sixty-six, proclaimed August eleventh, eighteen hundred and sixty-six, there is a provision purporting to authorize a sale by the Secretary of the Interior of Cherokee neutral lands in Kansas, but which reserves from sale lands having improvements of the value of fifty dollars, not being mineral, and occupied by any person for agricultural purposes, and which gives to occupants the right to purchase one hundred and sixty acres each of said lands, under and by virtue of which about eight hundred families are provided for; and whereas, between August eleventh, eighteen hundred and sixty-six, and June sixth, eighteen hundred and sixty-eight, about two thousand seven hundred additional families have settled on said Cherokee neutral lands, each family occupying one hundred and sixty acres, on which improvements have been made at an average cost of about five hundred and ten dollars, beside expenditures for living of four hundred and fifty dollars for each family, said settlements and improvements being made without objection from any source, and on the faith that the settlers would be protected in the right to acquire title to said lands as other settlers on the public lands; and whereas, on the thirtieth day of August, eighteen hundred and sixty-six, a contract was made by and between James Harlan, Secretary of the Interior, and the American Emigrant Company, for the sale of certain portions of said lands, which contract has been assigned by said company to James F. Joy, said contract and assignment being on file in the Department of the Interior; and whereas a supplementary treaty between the United States and said Cherokee Nation was made April twenty-seventh, eighteen hundred and sixty-eight, ratified June sixth, and proclaimed June tenth, eighteen hundred and sixty-eight, all without any knowledge thereof by any of the persons occupying said lands, and which ratifies said contract with the American Emigrant Company, and the assignment thereof to said Joy, with certain modifications provided in said supplemental treaty, but which makes no provision for the protection of the persons or families who have settled upon and improved said lands, but purports to ratify a sale of said lands, including the improvements thereon: Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any person, prior to June tenth, eighteen hundred and sixty-eight, shall have settled on any tract of land of one hundred and sixty acres or less, in the body of lands known as the Cherokee neutral lands, and shall have made improvements thereon of the value of fifty dollars, and occupied such tract for agricultural purposes, such person, his heirs or assigns, so occupying any such tract of land, shall, after due proof made in such manner as may be prescribed by the

Secretary of the Interior, be entitled to enter and receive a patent for the lands so occupied, on paying one dollar and twenty-five cents an acre within one year, in such manner as the Secretary of the Interior may prescribe; and the money so to be paid for said lands shall be paid over to said Cherokee Indians.

Passed the House of Representatives July 13, 1868.

Attest: EDWARD McPHERSON, *Clerk.*

[H. R. 73.]

JOINT RESOLUTION relative to the Cherokee neutral lands in the State of Kansas, and the late treaties respecting the same.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the treaties between the United States and the Cherokee Nation of Indians, proclaimed August eleventh, eighteen hundred and sixty-six, and June tenth, eighteen hundred and sixty-eight, as profess to authorize a sale of the lands described in the seventeenth article of said first-mentioned treaty, and all contracts and grants purporting to be made thereunder, be, and are hereby, annulled and declared void; and said lands shall be, and are hereby, made subject to settlement, entry, and sale at one dollar and twenty-five cents per acre, under the laws of the United States regulating pre-emptions, which laws are hereby extended over and made applicable to said lands; and the proceeds of the sales of said lands shall be from time to time paid over to said nation of Indians, until the sum paid shall be equal to one dollar and twenty-five cents per acre for all said lands; and the Secretary of the Treasury shall refund all moneys paid to the United States under any sale made by virtue of said treaty: *Provided*, That the purchasers of said lands shall pay the fees and expenses of their several purchases from the Government as required of other pre-emptors: *And provided further*, That when bona fide settlers are found on the sixteenth and thirty-sixth sections of said land, the same shall not be reserved for school purposes, but other lands of like amount in said tract, as contiguous thereto as may be, not occupied by settlers, shall be substituted therefor, and designated by the State of Kansas.

Passed the House of Representatives April 5, 1869.

Attest: EDWARD McPHERSON, *Clerk.*

It will be observed that the first resolution offered by Mr. Julian was "passed unanimously" on the 1st day of June, 1868, six days before the action of the Senate on the supplemental treaty, and nine days before its ratification and proclamation by the President; and that the second, which was an earnest protest against the issuance of patents for the very lands under consideration, was passed by the House on the 3d day of June, 1868, three days before that action by the Senate, and seven days before the *proclamation* of the supplemental treaty.

Your committee would call special attention to the two joint resolutions of the House of Representatives above quoted, and which were passed, the one on the 13th of July, 1868, and the other on the 5th of April, 1869, and both of which declared, as the will and the opinion of the House, that these particular settlers should have titles to their homes from the United States at $1.25 per acre.

The settlers, and their counsel and friends in Congress, held that the lands in contest had reverted to the United States by the terms of the law of 1830, the treaty of 1835, and the patent of 1838—first, by their making a treaty of alliance with the so-called Confederate States, and actually joining with them in open war against the United States; second, by the attempted sale of this very tract to the so-called Confederate States, and the actual receipt therefor of $150,000; and, lastly, if not by either or both of the above facts, then by their cession of this tract to the United States by the treaty of August 11, 1866; and that, having reverted to the United States, these lands were open to settlement under existing laws.

Among other authorities they quoted Felix Grundy, Attorney-General, opinion in case of Creek Indians, (Opinions, vol. 8, p. 390:)

Nothing more is necessary than to ascertain that the reservee left and removed from the land without an intention of returning and occupying it as his place of residence.

My opinion is, that so soon as a voluntary abandonment and removal from the premises actually took place, from that time the right of the United States accrued and was perfect and complete; and although the register and receiver could not act until they had a knowledge of such abandonment, still the *rights of individuals might well* and *legally have their origin* to different *portions of said land, according* to *then existing laws*, or *laws which might be passed by Congress.*

Attorney-General Butler (Opinions, vol. 3, p. 230) defines abandonment as "ceasing to have any direct personal connection with the use and enjoyment of the land. No judicial proceedings or actual entry on the part of the United States will be necessary to vest the estate in the United States. Whenever the estate of the Indian reservee shall have determined, the land becomes a part of the public domain. * * * * *Its liability to entry for floating claims, or for other purposes, will from that time be the same as if it had then for the first time been ceded to the United States.*"

Your committee find that the settlers took advice of eminent lawyers, and that, in January, 1869, Hon. B. F. Butler, Hon. William Lawrence, of Ohio, Hon. George W. Julian and Judge William Johnston, of Ohio, united in a written opinion that the sale of the Cherokee neutral lands to James F. Joy was void in law.

To establish the third proposition the settlers and their attorneys have relied upon the act of Congress of July 22, 1854, to organize the Territories of Kansas and Nebraska, section 12 of which contains these words:

And be it further enacted, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Kansas and Nebraska shall be subject to the operations of the pre-emption act of 4th September, 1841.

Also, upon the act of Congress of June 2, 1862, entitled "*An act to establish a land-office in Colorado, and for other purposes*," and which contained in the first section these words:

All the lands belonging to the United States, to which the Indian title has been or shall be extinguished, shall be subject to the operation of the pre-emption act of 4th September, 1841.

Your committee find that the view of the latter law taken by the settlers on the Cherokee neutral lands has been twice sustained by the supreme court of the District of Columbia; once, on the 16th of August, 1866, in the case of "Whitney vs. Frisbie," opinion of the court given by Justice Wylie, and again in final judgment of the court in same case, the opinion of the court being given by Chief Justice Cartter, May 27, 1868.

Your committee are fully convinced that these settlers located upon these lands in *good faith*, expecting and intending to get titles from the United States, under the laws of the country.

And further that their settlement upon lands in the condition in which they found the Cherokee neutral lands was a thing neither unusual nor strange, but quite the contrary.

On this point we could perhaps quote no higher authority than the speech of Senator Harlan, May 24, 1870:

But the honorable Senator informed the Senate that with his consent these settlers on these lands should not be permitted to purchase without competition with others one acre of land the possession of which they had acquired by wrong. He thought they were not settlers. "Settlers!" said he; "there is not a settler on these lands. They are robbers; they are trespassers; there can be no settlers until the lands are formally opened under the law for settlement and occupation!" How strangely that must have sounded to honorable Senators representing the new States here. How strangely it must have read when it met the eye of the Delegates from the Territories. How will it be understood by the inhabitants of Oregon and California? The Indian title to the land there has never been extinguished by treaty. Are there no settlers in either of those States? Are those people all land-thieves, marauders, who deserve no consideration by the Senate of the United States? You have no treaties with those Indians. Not an acre of their land has been purchased of them by the Government of the United States. How is it in New Mexico, where there are said to be over one hun-

dred thousand white people residing to-day? Not one acre of land in that Territory has ever been purchased of the Indians by the United States, nor an acre in Arizona, nor, I believe, in Utah, and, I believe, until very recently, not an acre in Colorado, Montana, or Dakota.

Are there no settlers in these great and growing States and Territories? Are they, too, all land-thieves, who deserve no consideration? And yet you have given them consideration. You have organized for them civil governments; you have sent to them, in their territorial condition, governors and judges; you have established courts of justice, and organized or directed them to organize legislative assemblies. In advance of the purchase of the title to a single acre of land from the Indians, you have authorized them to apply for admission as sovereign States of this Union. And yet they are in precisely the same condition to-day as these settlers on the *Osage Indian lands*, who went on in advance of the technical extinguishment of the Indian title. Are they to receive from this time forward no consideration here? Are they to be driven from their homes? Do you propose to put up their farms, their houses, humble though they may be, that shelter them and their families from the inclemency of the seasons, for sale at public outcry? *Sir, you cannot find men bad enough to compete with them for title to their homes.*

The proposition is totally impracticable. If the price, however, proposed in the bill, $1.25 an acre, is not enough; if you wish to charge these frontier settlers more money for their homes, to punish them for pushing on the car of civilization, amend the bill; strike out $1.25; put in two dollars, or more; but, in God's name, do not put them at the mercy of land-sharks and speculators, who might be bad enough to be willing to rob the settler of the proceeds of his labor and toil. If they are trespassers, it is in a technical sense merely; morally, they are not. They have done just as their neighbors have done; just as the inhabitants of all the new States have done. They are probably no worse and no better than the average of the people found elsewhere. Ordinarily, as soon as the Indian title is extinguished, the lands are subject to settlement by preemptors, in advance of the survey, and you in your wisdom have solemnly enacted laws providing that the citizen who does so under ordinary circumstances shall have the prior right to buy his home at $1.25 an acre. This is the solemn judgment of the nation proclaimed in its statute-book, read and known of all men. But if there is anything peculiar about these people, if they have committed any unusual oversight, make them pay smart-money in an increased price for their homes; but I would not place them at the mercy of land-speculators.

The proposition of the honorable Senator from Maine is incapable of execution. These people will not submit to competition in the purchase of their homes. Emigrant to the frontier will not compete with them, and outsiders will not be permitted to bid.

Your committee are further of the opinion that the settlers have used due diligence in the prosecution of their cause both before Congress and in the courts; but find that on the 18th day of November last the Supreme Court of the United States rendered a decision in the case of "Holden *vs.* Joy," which declared Joy's title to the lands under consideration to be valid.

After a settlement, beginning in some instances fourteen years ago, made in good faith, attended with much more than ordinary losses and difficulties, and with a contest for title which, your committee would respectfully submit, was begun and continued on very plausible grounds, and in which they were encouraged by such persons, official and otherwise, as they would naturally look to for assurance of final success, these settlers now find, by the decision of the highest judicial tribunal of the nation, that the title to their homes is vested in James F. Joy, and, by transfer made by him, in the Missouri River, Fort Scott and Gulf Railway Company. The case is one of *unprecedented hardship* upon a people whose only fault in the premises has been a *mistake*, under the circumstances quite natural.

Your committee are well aware that no words, nor any act of a President or Presidents, or of any other official, nor yet the action of the House of Representatives alone, could give title to these settlers, or any binding legal guarantee of title; but would most earnestly insist that all these taken together, under the very peculiar circumstances of this case, do constitute a moral guarantee which entitles their appeal to Congress for relief to very grave consideration.

Your committee are of the opinion that the relief asked for in the bill is a proper one, and that the United States should, at least, do nothing less than to afford these people this measure of compensation for loss of their homes on the Cherokee neutral land.

In response to the demand of the people, Congress, by the passage of the homestead law, fixed the reward of the pioneer for making a single settlement at one hundred and sixty acres. These people have already made one. It is not of their own choice that they are compelled to make another. Many children born on these claims on the neutral land are now half grown. Surely if this people is obliged to go again into the wilderness, they ask a reasonable thing when they ask to be allowed to redeem three hundred and twenty acres of that wilderness and make of it a fruitful field, and, in consideration of all the premises, to be allowed a title therefor from the United States.

The committee recommend the passage of a bill for their relief herewith reported.

S. C. POMEROY.

We concur that the good faith of the settlers on the Cherokee neutral lands is sufficiently shown. We concur, also, in recommending the passage of the bill reported by the committee.

E. CASSERLY.
WM. M. STEWART.
T. W. TIPTON.
T. W. OSBORN.

SUPPLEMENTAL ARTICLE TO THE TREATY OF JULY 19, 1866, BETWEEN THE UNITED STATES OF AMERICA AND THE CHEROKEE NATION OF INDIANS, CONCLUDED APRIL 27, 1868; RATIFICATION ADVISED JUNE 6, 1868; PROCLAIMED JUNE 10, 1868.

ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA,

To all and singular to whom these presents shall come, greeting:

Whereas to a treaty concluded at the city of Washington, in the District of Columbia, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and sixty-six, between the United States of America and the Cherokee Nation of Indians, through their respective representatives, a supplemental article was made and concluded at the city of Washington, in the District of Columbia, on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Nathaniel G. Taylor, commissioner, on the part of the United States, and Lewis Downing, H. D. Reese, Samuel Smith, Wm. P. Adair, J. P. Davis, Elias C. Boudinot, J. A. Scales, and Arch. Scraper, delegates of the said Cherokee Nation of Indians, on the part of said Indians, and duly authorized thereto by them, which supplemental article of treaty is in the words and figures following, to wit:

Supplemental article to a treaty concluded at Washington City, July 19th, A. D. 1866; ratified with amendments July 27th, A. D. 1866; amendments accepted July 31st, A. D. 1866; and the whole proclaimed August 11th, A. D. 1866, between the United States of America and the Cherokee Nation of Indians.

Whereas, under the provisions of the 17th article of a treaty and amendments thereto made between the United States and the Cherokee Nation of Indians, and proclaimed August 11th, A. D. 1866, a contract was made and entered into by James Harlan, Secretary of the Interior, on behalf of the United States, of the one part, and by the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, dated August 30th, A. D. 1866, for the sale of the so-called "Cherokee neutral lands," in the State of Kansas, containing eight hundred thousand acres, more or less, with the limitations and restrictions set forth in the said 17th article of said treaty as amended, on the terms and conditions therein mentioned, which contract is now on file in the Department of the Interior;

And whereas Orville H. Browning, Secretary of the Interior, regarding said sale as illegal and not in conformity with said treaty and amendments thereto, did, on the ninth day of October, A. D. 1867, for and in behalf of the United States, enter into a

contract with James F. Joy, of the city of Detroit, Michigan, for the sale of the aforesaid lands on the terms and conditions in said contract set forth, and which is on file in the Department of the Interior;

And whereas, for the purpose of enabling the Secretary of the Interior, as trustee for the Cherokee Nation of Indians, to collect the proceeds of sales of said lands and invest the same for the benefit of said Indians, and for the purpose of preventing litigation and of harmonizing the conflicting interests of the said American Emigrant Company and of the said James F. Joy, it is the desire of all the parties in interest that the said American Emigrant Company shall assign their said contract and all their right, title, claim, and interest in and to the said "Cherokee neutral lands" to the said James F. Joy, and that the said Joy shall assume and conform to all the obligations of said company under their said contract, as hereinafter modified:

It is therefore agreed, by and between Nathaniel G. Taylor, commissioner on the part of the United States of America, and Lewis Downing, H. D. Reese, Wm. P. Adair, Elias C. Boudinot, J. A. Scales, Archie Scraper, J. Porum Davis, and Samuel Smith, commissioners on the part of the Cherokee Nation of Indians, that an assignment of the contract made and entered into on the 30th day of August, A. D. 1866, by and between James Harlan, Secretary of the Interior, for and in behalf of the United States of America, of the one part, and the American Emigrant Company, a corporation chartered and existing under the laws of the State of Connecticut, of the other part, and now on file in the Department of the Interior, to James F. Joy, of the city of Detroit, Michigan, shall be made; and that said contract, as hereinafter modified, be, and the same is hereby, with the consent of all parties, re-affirmed and declared valid; and that the contract entered into by and between Orville H. Browning, for and in behalf of the United States, of the one part, and James F. Joy, of the city of Detroit, Michigan, of the other part, on the 9th day of October, A. D. 1867, and now on file in the Department of the Interior, shall be relinquished and canceled by the said James F. Joy, or his duly authorized agent or attorney; and the said first contract, as hereinafter modified, and the assignment of the first contract, and the relinquishment of the second contract, are hereby ratified and confirmed, whenever said assignment of the first contract and the relinquishment of the second shall be entered of record in the Department of the Interior, and when the said James F. Joy shall have accepted said assignment and shall have entered into a contract with the Secretary of the Interior to assume and perform all obligations of the said American Emigrant Company under said first-named contract, as hereinafter modified.

The modifications hereinbefore mentioned of said contract are hereby declared to be—

1. That within ten days from the ratification of this supplemental article the sum of seventy-five thousand dollars shall be paid to the Secretary of the Interior as trustee for the Cherokee Nation of Indians.

2. That the other deferred payments specified in said contract shall be paid when they respectively fall due, with interest only from the date of the ratification hereof.

It is further agreed and distinctly understood that, under the conveyance of the "Cherokee neutral lands" to the said American Emigrant Company, "with all beneficial interests therein," as set forth in said contract, the said company and their assignees shall take only the residue of said lands after securing to "actual settlers" the lands to which they are entitled under the provisions of the 17th article and amendments thereto of the said Cherokee treaty of August 11th, 1866; and that the proceeds of the sales of said lands, so occupied at the date of said treaty by "actual settlers," shall inure to the sole benefit of, and be retained by, the Secretary of the Interior as trustee for the said Cherokee Nation of Indians.

In testimony whereof, the said commissioners on the part of the United States and on the part of the Cherokee Nation of Indians have hereunto set their hands and seals, at the city of Washington, this 27th day of April, A. D. 1868.

N. G. TAYLOR,
Commissioner in behalf of the United States.

Delegates of the Cherokee Nation.

LEWIS DOWNING,
Chief of Cherokees.
H. D. REESE,
Chairman of Delegation.
SAMUEL SMITH,
WM. P. ADAIR,
J. P. DAVIS,
ELIAS C. BOUDINOT,
J. A. SCALES.
ARCH. SCRAPER,
Cherokee Delegates.

In presence of—
H. M. WATTERSON.
CHARLES E. MIX.

And whereas the said supplemental article of treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the sixth day of June, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
June 6, 1868.

Resolved, (*two-thirds of the Senators present concurring*,) That the Senate advise and consent to the ratification of the supplemental article [concluded April 27, 1868] to a treaty between the United States and the Cherokee Nation of Indians, concluded at Washington City, July 19, 1866; ratified with amendments July 27, 1866; amendments accepted July 31, 1866, and the whole proclaimed August 11, 1866.

Attest:

GEO. C. GORHAM,
Secretary.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the sixth of June, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said supplemental article of treaty as aforesaid.

In testimony whereof I have hereto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington, this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the [SEAL.] United States of America the ninety-second.

ANDREW JOHNSON.

By the President:
WILLIAM H. SEWARD,
Secretary of State.